



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

**OFFICE OF PREVENTION, PESTICIDES
AND TOXIC SUBSTANCES**

Bryan Arroyo,
Acting Assistant Director for Endangered Species
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, D.C. 20204

Dear Mr. Arroyo:

The Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency (EPA) respectfully requests the initiation of Endangered Species Act (ESA) section 7(a)(2) consultation. This consultation request addresses 8 listed mussel species and pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which contain the active ingredient atrazine. Our assessments resulted in a determination that atrazine will have No Effect (NE) on one species (stirrup shell mussel). For the other seven species subject to this assessment (pink pearly mucket, rough pigtoe, shiny pigtoe, fine-rayed pigtoe, heavy pigtoe, ovate clubshell, southern clubshell) and for potential effects to critical habitat our assessment includes NE's, Not Likely to Adversely Affect (NLAA) and Likely to Adversely Affect (LAA) determinations. Consistent with Service regulations, we are not requesting consultation on No Effect determinations made as part of this assessment.

For those determinations that the pesticides subject to this assessment are Likely to Adversely Affect the species or critical habitat, I am requesting initiation of formal consultation. For those determinations that the pesticides subject to this assessment are Not Likely to Adversely Affect the species or critical habitat, I am requesting your written concurrence pursuant to the Services' informal consultation regulations in 50 CFR Part 402, Subpart B.

As you are aware, under the counterpart consultation regulations at 50 CFR 402.45, EPA is not required to engage in further consultation with the Services regarding NLAA determinations. However, on August 24, 2006, the U.S. District Court for the Western District of Washington issued an order setting aside the "NLAA" provisions of the counterpart consultation regulations. EPA does not agree with the court's decision and intends to continue to work with the Services and the Department of Justice to determine the scope and applicability of the decision. Although the Federal Government has not yet determined whether the decision has enjoined the counterpart regulations in the states where these species are located, we believe the prudent course pending our review with the Department of Justice is to initiate informal consultation, for purposes of the attached assessments and effects determinations only, and without conceding the necessity to initiate informal consultation in this context.

The scope of this assessment is consistent with a Settlement Agreement into which the federal government entered with the Natural Resources Defense Council (NRDC) to resolve litigation brought against EPA under the Endangered Species Act. As a result, this assessment focuses only on the 8 named species. EPA acknowledges that use of pesticides containing atrazine is not limited to the geographic scope of this assessment and that in the future, potential risks to other listed species will need to be evaluated by EPA.

Consistent with the Settlement Agreement, our assessment was given to NRDC on February 28, 2007 providing them a 14 day period in which to submit input to EPA regarding the assessment and effects determinations. The Settlement Agreement specifies that should EPA receive such input during that time, we will forward it to the U.S. Fish and Wildlife Service along with this request for consultation. The NRDC has informed us they will be submitting their comments late today. As a result of the timing of that submission, their comments will be available on our Web site, on March 15, 2007.

In the interest of transparency, EPA also posted this assessment on our Web site on March 1, 2007. While doing so was not a request for public comment, we nonetheless received input from: Syngenta (a major registrant of atrazine products), the Triazine Network (a consortium of grower groups), and Crop Life America (an association representing pesticide manufacturers). These comments are included with our submission for our joint consideration during consultation.

While EPA has not conducted an in depth review of these comments, I note that several of the issues raised focus on the need to further refine the assessments by using more specific species location information and once identified, considering specific parameters of the waters (such as flow rates) in which these species live. These comments are consistent with EPA's conclusions that significant refinement could be accomplished with more specific species location information. We expect that the Service will be in a position to bring information regarding species locations to the table during consultation.

The comments submitted also point out that refinement should be conducted based on further analysis of the targeted monitoring data used in the assessment. Again, these comments are consistent with EPA's conclusions that further analysis of these monitoring data could result in changing some or all of the LAA determinations to NLAA determinations. As some of the commenters are aware, EPA is currently validating and analyzing the subject monitoring data that were provided to EPA in January 2007, and will be presenting the analysis and the conclusions drawn from the analysis to EPA's Scientific Advisory Panel for scientific peer review in November, 2007. If EPA believes, based on its analysis and the scientific peer review of that analysis, that any or all of our LAA determinations should be changed we will communicate that to your office and determine with you the appropriate next steps.

The subject assessment and effects determinations were conducted consistent with the scientific procedures outlined in the Agency's Overview Document¹ and utilize best commercial and scientific data available at the time the assessment was conducted. These determinations were made and peer reviewed by staff in my office who have been trained by the Services to make NLAA determinations.

As agreed to in the past, the subject assessment and effects determinations and appendices, and the comments received and noted above, are available to your staff from our Web site at <http://www.epa.gov/oppfead1/endanger/effects/index.html#atrazine>. Please let me know if you have any questions regarding this request or the materials being provided to initiate consultation.

Enclosures

Sincerely,

/original signed by Arthur-Jean B. Williams March 14, 2007/

Arthur-Jean B. Williams, Associate Director
Environmental Fate and Effects Division (7507P)

cc: Debbie Edwards

¹ Overview of the Ecological Risk Assessment Process in the Office of Pesticide Programs, Environmental Protection Agency (January 2004)